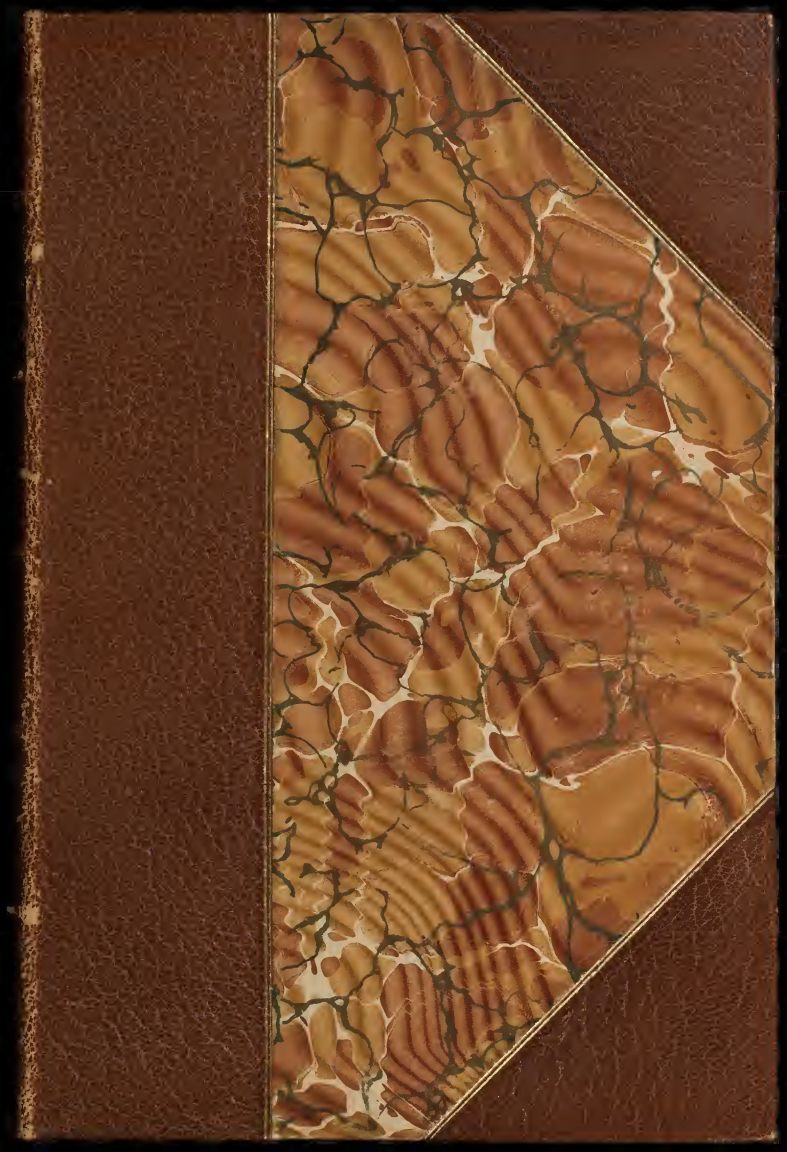

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OSCEOLA
SEQUOYA
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BLACK HAWK
KEOKUK
SACAGAWEA
BENITO JUAREZ
MANGUS
COLORADAS
LITTLE CROW
SITTING BULL
CHIEF JOSEPH
GERONIMO

TO PERPETUATE THE HISTORY AND DEVELOPMENT OF THE PEOPLE REPRESENTED BY THE ABOVE CHIEFS AND WISE MEN THIS COLLECTION HAS BEEN GATHERED BY THEIR FRIEND

EDWARD EVERETT AYER

AND PRESENTED BY HIM TO

THE NEWBERRY LIBRARY

1911

Contents.

THE INDIAN TERRITORY.

ARGUMENTS

OF

WILLIAM P. ROSS,

OF THE CHEROKEE DELEGATION,

DELIVERED BEFORE

The Committee on Territories of the House of Representatives,

IN OPPOSITION TO BILLS BEFORE THE COMMITTEE TO ESTABLISH

THE TERRITORY OF OKLAHOMA

ON THE

1st day of February and the 5th day of March, 1872.

WASHINGTON:
CHRONICLE PUBLISHING COMPANY, 511 NINTH STREET.
1872.

not paupers fed from the hand of charity, but are entirely self-sustaining. The money paid to them annually is no gratuity, wrung by taxation from the sweating brow of the white man, but is the interest of your national obligations for lands obtained from them at your own prices, and which were seldom, if ever, equal to their true value. They ask not for these changes. They dread them. They protest against them. Does not their own experience and the history of the race sustain them in so doing, without subjecting them to the imputations of selfishness, indolence, degradation, and prejudice. The whole history of the country sustains the declaration of President Van Buren that "a mixed occupancy of the same territory by the white and red man is incompatible with the safety and happiness of either." The condition of those now before you demonstrates the same fact. Why are they more numerous, more wealthy, more advanced, more hopeful and better preserved than any others within your borders? Is it not because their rights have been better protected? Is it not because they have been allowed to remain in greater security and given more time for improvement? And what arguments are brought forward now to induce you to strike down their political status, to destroy their organizations, to seize their lands, and to change in the twinkling of an eye the whole Indian policy of your Government? I have shown you that your treaties forbid it, that your courts have not legalized it, that necessity does not require it, while those to be most affected and injured by it protest against it. What, then? Why, "the world is moving!" Indeed! and has it not been moving since the morning stars first sang together for joy! We must move with it or be crushed! And pray who proposes to make a brake of himself to stop its revolutions down the slant of time. But "it is inevitable." Ah! and have we a seer who penetrating the great future presumes to execute the decrees of the Almighty upon the children of his creation in advance of his own good time!

I need not tell you, gentlemen, that I am not the enemy of your people or Government. Your blood largely predominates in my veins, while the evening and morning devotions of my earliest manhood were offered up in a building scarred by the balls of a revolutionary conflict. I need not tell you that I do not despise knowledge, civilization, and a true manhood among the Cherokee people. Would that all of them were not my peers, but even your own. But I am here to represent their views, which are coincident with mine, and to defend, humbly though it be, what my conscience and judgment tell me is true, just, and expedient in connection with their affairs. I have endeavored to do so, and now, after thanking you sincerely for the kindness with which you have been pleased to listen to me, leave the case with all the important interests it involves, to your wisdom and sense of justice.

PROTEST OF THE INDIAN DELEGATES

Against the

Bill to Establish the Territory of Oklahoma.

2

Protest of the Indian Delegates against the Bill to Establish the Territory of Oklahoma.

To the Congress of the United States:

The undersigned Delegates, representing their respective nations of the Indian Territory, would respectfully beg leave to call the attention of your honorable body to the interests of their people, which, under the most solemn treaty obligations, have been placed under the care of your Government for protection. On the 10th ultimo we had the honor of submitting to Congress a protest against the bill (H. R. No. 2635) pending in the House of Representatives, reported by Mr. Parker, of Missouri, from the Committee on Territories, on the 2d of last May. Our attention has since been attracted to two additional bills, proposing to Territorialize our country, without the consent of our people—one introduced into the House by Mr. Parker, (No. 3086,) on the 9th ultimo, and the other into the Senate by Mr. Pomeroy, of Kansas, on the 13th, (No. 1244.) We have endeavored to examine this proposed legislation with impartial justice to all concerned, and we are confident that we have done so; and without meaning any disrespect to the Government, we affirm that all of these Territorial projects are like most the others that have for the last several years been defeated in Congress, and if their subject-matter becomes a law of the United States, the inevitable result will be the destruction of the existing Indian policy of the Government, of our Indian nationalities, and finally, of the Indians themselves, with an absorption to the Government and its citizens of all

the lands, mines, and other property of the Indians. That we are justified in this conviction, we need only refer you to the reports from the Committee on Territories accompanying said bill No. 2635, and to the bills themselves. These reports are meant, of course, as exponents of this Territorial agitation, and show the most charitable view of the subject taken by those who are pushing it forward. The majority report says, after expressing the belief that the bill under consideration will change the existing Indian policy of the Government: "That there is a necessity for that change, no one can doubt * * The object proposed by this substitute reported by the committee is to provide a limited Territory, of reasonable extent, within which all the Indian tribes *which now stand in the way of civilization* of the country can be gathered. * * The Government heretofore has always endeavored to keep the Indians and the whites who surrounded them *separate*. The question, at this time, may be pertinently asked if this policy can be continued. It is hopeless to expect that civilization and all its attendant blessings and benefits will stop on the borders of a barrier so fragile and so opposed to the progress of the times and the demands of the age. It is a conclusion already demonstrated that, whether *right* or *wrong*, these Indian lands will become the abode of civilization. Over all these lands, wholly indifferent to the rights of the Indians—some attracted by the allurements of soil and climate, some by a restless spirit of adventure, some by a feverish spirit of speculation—will very soon spread a hardy, daring, and determined pioneer population. * * It is a foregone conclusion that the better security of the Indians and the safety of the whites demand some other *system* of government for that Territory than the one now in existence there. We believe that the remedy is afforded by the substitute as reported by the committee. This bill will have the effect of * *

raising them (the Indians) to the dignity of American citizenship, and thus put in their own hands weapons, (in the shape of ballots,) for their own protection *more potent than all the treaties* which have ever been made with them." From these quotations from the majority report it is manifestly clear that our ideas are amply supported, that the purpose of the legislation under consideration is to set aside the present Indian policy, to supplant our local Indian governments with a general one of the United States, subject only to the control of Congress, and to abolish our treaties, and to make the people citizens of the United States, and settle among them the whites. If any further proof is necessary, we respectfully invite your attention to the following extract from the minority report from the Committee on Territories, submitted by Mr. McKee, of Mississippi. Referring to the subject under consideration, that report states:

These, and similar treaties of like import, are in force and binding to-day. If there is any binding force in solemn guarantee and written covenant, in plighted faith and national honor, then we cannot, must not, establish this Territory. But the force of these treaties is attempted to be broken by the assertion that the treaties of 1866 provide for a certain kind of territorial government. They do nothing of the kind. They do provide that the Indians may hold an international council or confederation of the tribes, carefully preserving their tribal relations. And all this has been done for four years. The council meets annually. It was established by the Executive Department, and has been indorsed by Congress every year since, by annual appropriations to pay its expenses. The treaties themselves are the organic act of this council.

The proposed legislation is neither wise or expedient, because it proposes to blend, against their will, twenty tribes, with different laws, languages, customs, and interests, into one heterogeneous mass, bound together only by the arbitrary will of Congress.

The Indians do not desire it. They know their own interests. They are not wild, untutored savages. The five large tribes are well advanced in civilization. They have their laws and constitutions, courts and sheriffs, judges and jurors, schools and churches, bibles and newspapers. Under their present form and system of government they are rapidly increasing in wealth, population, and civilization; and this can be said of no other Indians, and no other system of Indian government. All over this broad continent the history of the Indian for two centuries is a history of barbarism and rapid decay, with this one exception. And we are asked now to strike down the last and only hope for the Indian on this continent. Not for the good of the Indians, but for the interest of the whites. Is not this country broad enough for all? Does not the "boundless West" still invite the emigrant? And the Middle States are not even yet half filled. Is the Indian to have no resting place for his weary feet? Must he be pushed to hurried destruction?

The real root of this movement springs from the fact that Congress, in an unwise moment, granted many millions of acres belonging to these Indians to railroad corporations, contingent on the extinction of the Indian title. And now these soulless corporations hover like greedy cormorants over this Territory, and incite Congress to remove all restraint, and allow them to swoop down and swallow over twenty-three millions acres of the land of this Territory, destroying alike the last hope of the Indian and the honor of the Government. For if this bill is passed then the result will be, as every one knows, that the tribes will be broken up, the railroad companies will obtain most of the valuable lands of the Territory, and the Indians will be crushed and overwhelmed by the tide of rude pioneer populations that will pour in upon them. And why must we do this? In order that corporations may be enriched and railroad stocks advanced in Wall street? or is it, as has been urged, in order to "aid the progress of civilization," that we are called upon to break solemn compact and treaty stipulations? Surely we are not the apostles of any such civilization which seeks progress through a breach of faith, which even barbarians abhor.

The Indian title which these railroad companies seek to destroy is not the ordinary "Indian title." The five large tribes hold their lands in "fee simple," so expressed in their deeds. These lands were bought and paid for, or exchanged for, with the Government of the United States, and they hold the same patent for their lands that any white man holds for lands he may have purchased from the United States. Their title is not a grant of undefined scope of territory. It is a deed describing the lands accurately, even to the $\frac{1}{160}$ part of an acre.

It cannot be denied that this measure is only sought by those with whom the security of Indian rights and the improvement of the Indian race is but a secondary consideration, if considered at all.

Under the circumstances, it is evident that a radical change in the political system of these Indians is not at present called for. It is certain that they, through their proper representatives, are opposed to it, and regard such measures as aggressive in their character, and dangerous to their interests and prosperity. The most that a judicious policy would at present seem to indicate would be the creation of a court, such as is contemplated by their treaties, and the judicious encouragement of the present intertribal government, until it can be able to gather these conflicting elements into one homogeneous mass.

To justify the conclusion of the minority of the committee, we need only refer you to the 6th section of each bill presented by Mr. Parker, and the 16th section of the bill introduced by Mr. Pomeroy.

The following is that section of Mr. Parker's bill:

SEC. 6. That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil, no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; and said legislative assembly shall not have power to create private corporations by special acts, or to confer upon

such corporations special rights, privileges, or franchises by such acts; but it shall be lawful for such assembly to enact general laws under which, on equal terms, any of the citizens may, by compliance with their requirements, organize themselves into such corporations for mining, manufacturing, and other industrial pursuits, or for the establishment of religious, benevolent, charitable, or literary societies.

What is meant by the expression in this section, "But no law shall be passed *interfering* with the primary disposal of the soil?" The meaning is evident that the Legislature of the proposed Territory shall not interfere with any disposition of our soil heretofore made by Congress; and the reference is clearly to the conditional land grants in our country, made to certain railroad companies, aggregating 23,000,000 acres. In accord with this idea we refer you to the expression in the section immediately following the extract above: "*Nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.*" This is plainly an admission that non-residents have lands in our country. What lands? Conditional land grants, that will *mature* under this Territorial legislation. What non-residents? Railroad corporations, of course. And how many of them are there? They will probably aggregate 300 men, that if the bill passes will realize for nothing 23,000,000 acres of the finest land in America. And, as if to make the monopoly of this land-grab complete, this section provides further, that the Legislature of the Territory shall pass laws to establish corporations only for "mining, manufacturing, and other industrial pursuits, or for the establishment of religious, benevolent, charitable, or literary societies;" *excluding railroad corporations*, and thus prohibiting their creation by the Territorial Legislature.

We next invite attention to Mr. Pomeroy's bill of the Senate. Like the others, the land feature of that bill is the most important; which is section 16, as follows:

SEC. 16. That no disposition shall be made of the lands within this Territory until individual selections, provided for by law or treaty stipulation, for all the members of the several tribes, shall have been made and approved by the Secretary of the Interior; and no homestead or pre-emption claimants shall be allowed, under this act, to settle and claim any portion of said Territory; nor shall this act be construed to authorize the immigration and settlement into said Territory; and all questions relating to the final disposition of the land within this Territory, not selected and occupied by Indians, (and those entitled to select by virtue of their relations to the tribes,) shall be reserved and held for the subsequent legislation by Congress. And this act shall not be construed to affect in any way the title or occupancy, by the Indians, of any portion of the lands within said Territory; but the title to the same, and the rights of all the parties claiming any of said lands, shall be and remain the same as though this act had not passed.

By a close inspection of this section three things will appear:

First. That the Indians and some other party are provided for in the distribution of our lands.

Second. That pre-emption claimants, or settlers so-called, are excluded from the Territory.

Third. That, as between the Indians and the other claimants, Congress shall settle all controversies about vacant lands.

As to the first proposition: That part of the section providing that no disposition shall be made of our lands until *after* individual selections are made, implies that the Indians will not get all of their lands; leaving a remainder to be made a "disposition" of to other parties than the Indians.

As to the second proposition: That part of the section providing that "*no homestead or pre-emption claimants shall be allowed under this act to settle and claim any portion of said Territory; nor shall this act be construed to authorize*

the emigration and settlement into said Territory," excludes, most plainly, all settlers from any part of the Territory.

As to the third proposition: That provision of the section declaring, "*and all questions relating to the final disposition of the land within this Territory, not selected and occupied by Indians, (and those entitled to select, by virtue of their relations to the tribes,) shall be reserved and held for the subsequent legislation of Congress,*" &c., implies that the Indians and those other parties, meaning, of course, railroad companies. (as the settlers are exeluded,) might possibly disagree as to the *ownership* of the lands left after the settlement of the Indians; in which event Congress shall come in as an umpire to settle the disagreement.

It will thus be seen that this section of Mr. Pomeroy's bill gives the Indians *only a part of their own lands, and the remainder to railroad companies*, and entirely ignores the settlers. We have a perfect *fee-simple* title to our lands, and we respectfully submit that Congress has no more right to take them away from us, than it has to dispossess every real-estate holder in this city. That we do have a *fee-simple* title to our lands, we respectfully refer to the late decision of your Supreme Court, in the case of Holden *vs.* Joy, which declares as follows:

* * * * * * *

Indeed, treaties have been made by the United States with the Indian tribes ever since the Union was formed, of which numerous examples are to be found in the seventh volume of the public statutes.—(Cherokee Nation v. Georgia, 5 Pet., 17; Worcester v. Georgia, 6 Pet., 543.)

Indian tribes are states in a certain sense, though not foreign states, or States of the United States, within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign states, citizens, or subjects. They are not states

within the meaning of any one of these clauses of the Constitution, and yet in a certain domestic sense, and for certain municipal purposes, they are states, and have been uniformly so treated since the settlement of our country and throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible, in their political character, for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community.

Laws have been enacted by Congress in the spirit of those treaties, and the acts of our Government, both in the executive and legislative departments, plainly recognize such tribes or nations as states, and the courts of the United States are bound by those acts.—(Doe v. Braden, 16 How., 635; Fellows v. Blacksmith, 19 How., 372; Garcia v. Lee, 12 Pet., (519.)

Express power is given to the President, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur, and inasmuch as the power is given, in general terms, without any description of the objects intended to be embraced within its scope, it must be assumed that the framers of the Constitution intended that it should extend to all those objects which in the intercourse of nations had usually been regarded as the proper subjects of negotiation and treaty, if not inconsistent with the nature of our Government and the relation between the States and the United States.—(Holmes v. Jennison et al., 14 Pet., 569; I Kent's Com., 166; 2 Story on Const., sec. 1508; 7 Hamilton's Works, 501; Duer's Jurisp., 229.)

Beyond doubt the Cherokees were the owners and occupants of the territory where they resided before the first approach of civilized man to the western continent, deriving their title, as they claimed, from the Great Spirit, to whom the whole earth belongs, and they were unquestionably the sole and exclusive masters of the territory, and claimed the right to govern themselves by their own laws, usages, and customs.

Guided by nautical skill, enterprising navigators were conducted to the New World. They found it, says Marshall, Ch. J., in possession of a people who had made

small progress in agriculture or manufactures, and whose general employment was war, hunting, and fishing. Expeditions were fitted out by all the great maritime powers of the Old World, and they visited many parts of the newly discovered continent, and each made claim to such part of the country as they visited. Disputes arose and conflicts were in the prospect, which made it necessary to establish some principle which all would acknowledge and which should decide their respective rights in case of conflicting pretensions. Influenced by these considerations they agreed that discovery should determine the right, that discovery should give title to the government by whose subjects, or by whose authority, it was made, against all other governments, and that the title so acquired might be consummated by possession.—(Johnson v. McIntosh, 8 Wheat., 573.)

As a necessary consequence the principle established gave to the nation making the discovery the sole right of acquiring the soil and of making settlements on it. Obviously this principle regulated the right conceded by discovery among the discoverers, but it could not affect the rights of those already in possession, either as aboriginal occupants or as occupants by virtue of a more ancient discovery. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell. Colonies were planted by Great Britain, and the United States, by virtue of the Revolution and the treaty of peace, succeeded to the extent therein provided to all the claims of that government, both political and territorial.

Throughout, the Indians, as tribes or nations, have been considered as distinct, independent communities, retaining their original, natural rights as the undisputed possessors of the soil, from time immemorial, subject to the conditions imposed by the discoverers of the continent, which excluded them from intercourse with any other government than that of the first discoverer of the particular section claimed. They could sell to the government of the discoverer, but they could not sell to any other governments or their subjects, as the government of the discoverer acquired, by virtue of their discovery, the exclusive pre-emption right to purchase and the right to

exclude the subjects of all other governments, and even their own, from acquiring title to the lands.

Enough has already been remarked to show that the lands conveyed to the United States by the treaty were held by the Cherokees under their original title, acquired by immemorial possession, commencing ages before the New World was known to civilized man. Unmistakably their title was absolute, subject only to the pre-emption right of purchase acquired by the United States as the successors of Great Britain, and the right also on their part as such successsors of the discoverer to prohibit the sale of the lands to any other governments or their subjects, and to exclude all other governments from any interference in their affairs.—(Mitchel et al. v. United States, 9 Pet., 748.)

Evidently, therefore, the Cherokees were competent to make the sale to the United States and to purchase the lands agreed to be conveyed to them by the second article of the treaty. Both parties concede that the title of the United States to the tract known as the Cherokee neutral lands was perfect and complete, and that the tract includes the land in controversy.

Title to that tract was acquired by the United States as a part of the Louisiana purchase from the French Republic. By the treaty between the United States and the French Republic of April 30, 1803, the chief executive officer of that republic ceded the said territory to the United States, with all its rights and appurtenances, forever.—(8 Stat. at Large, 200.)

When the President took possession of the territory the absolute fee-simple title and right of soverignty and jurisdiction became vested in the United States as the successor of the original discoverer, subject only to the Indian title and right of occupancy as universally acknowledged by all the departments of our Government throughout our history. All agree that this land then, and for many years thereafter, was occupied by the Osage Indians. On the 2d of June, 1825, the Osage tribes, by the treaty of that date, ceded to the United States all their right, title, interest, and claims to the lands lying * * * west of the State of Missouri, with such reservations, and for such considerations, as are therein specified, which, it is

conceded, extinguished forever the title of the Osage Indians to the neutral lands.—(7 Stat. at Large, 240.)

Prior to the treaty of the 8th of July, 1817, the Cherokees resided east of the river Mississippi. Pursuant to that treaty they were divided into two parties, one electing to remain east of the Mississippi, and the other electing to emigrate and settle west of it, and it appears that the latter made choice of the country on the Arkansas and White rivers, and that they settled there upon the lands of the United States described in the treaty.—(7 Stat. at Large, 157.)

Possessed as the United States were of the fee-simple title to the neutral lands, discharged of the right of occupany by the Osage Indians, it was clearly competent for the proper authorities of the United States to convey the same to the Cherokee Nation. Subsequent acts of the United States show that the stipulations, covenants, and agreements of the treaty in question were regarded by all the Departments of the Government as creating binding obligations, as fully appears from the fact that they all concurred in carrying the provisions into full effect.—(Minis v. United States, 15 Pet., 448; Porterfield v. Clark, 2 How., 76.)

Appropriations were made for surveys, and surveys were ordered and plats were made, and on the first of December, 1838, a patent for the land promised was issued by the President, in full execution of the second and third articles of the treaty. Among other things it is recited in the patent that it is issued in execution of the agreements and stipulations contained in the said several treaties, and that the United States do give and grant unto the Cherokee Nation the two described tracts of land, as surveyed, containing the whole quantity therein mentioned, to have and to hold the same, together with all the rights, privileges, and appurtenances thereto belonging, to the said Cherokee Nation forever, subject to certain conditions therein specified, of which the last one is that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandons the premises.

Objection is made by the appellant that the treaty was inoperative to convey the neutral lands to the Cherokee

Nation, which may well be admitted, as none of its provisions purport, *proprio vigore*, to make any such conveyance. Nothing of the kind is pretended, but the stipulation of the second article of the treaty is that the United States covenant and agree to convey to the said Indians and their descendants, by patent in fee simple, the described additional tract, meaning the tract known as the neutral lands; and the third article of the treaty stipulates that the lands ceded by the treaty, as well as those ceded by a prior treaty, shall all be included in one patent, to be executed to the Cherokee Nation of Indians by the President, according to the provisions of the before-mentioned act of Congress.—(Gaines v. Nicholson, 9 How., 356; Insnrance Company v. Canter, 1 Pet., 542.)

Suppose that is so, still it is insisted that the President and Senate, in concluding such a treaty, could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted.—(United States v. Brooks, 10 How., 442. Meigs v. McClung, 9 Cran., 11.)

On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political.—(Wilson v. Wall, 6 Wall., 89. Insurance Co. v. Canter, 1 Pet., 542. Doe v. Wilson, 23 How., 461. Mitchel & al. v. United States, 9 Pet., 949. United States v. Brooks & al., 10 How., 460. The Kansas Indians, 5 Wall., 737. 2 Story on Const., sec. 1508. Foster & al. v. Neilson, 2 Pet., 254 Crews & al. v. Burcham, 1 Black, 356. Worcester v. Georgia, 6 Pet., 562. Blair v. Pathkiller, 2 Yerger, 439. Harris v. Burdett, 4 Blackf., 369.)

Much reason exists, in view of those authorities and others which might be referred to, for holding that the objection of the appellant is not well founded, but it is not necessary to decide the question in this case, as the treaty in question has been carried into effect and its provisions have been repeatedly recognized by Congress as valid.—(Insurance Co. v. Canter, 1 Pet., 511. Lawrence's Wheat., 48.)

Congress, on the 2d of July, 1836, appropriated four million five hundred thousand dollars for the amount stipulated to be paid for the lands ceded by the Cherokees in the first article of the treaty, deducting the cost of the land to be conveyed to them west of the Mississippi under the second article of the same treaty, which is the precise amount stipulated to be paid for the concession, deducting the consideration which the Indians agreed to allow for the neutral lands. Appropriations were also made by that act to fulfill and execute the stipulations, covenants, and agreements contained in the fourth, eleventh, seventeenth, and eighteenth articles of the treaty, and for the removal of the Cherokees, and for surveying the lands set apart by treaty stipulations for the Cherokee Indians west of the Mississippi River.—(5 Stat. at Large, 73.)

Commissioners were appointed to adjudicate the claims of individual Cherokees, as provided in the thirteenth article of the treaty, and their compensation was fixed by Congress, and appropriations were made by Congress for that purpose. Such a board was duly constituted, consisting of two commissioners, and it was made the duty of the Attorney General, in case of their disagreement, to decide the point in difference.—(4 Op. Att. Gen., 580, 598, 613, 615–621. 10 Stat. at Large, 673, 687. 11 Ibid., 80.)

Prior treaties between the United States and the Cherokee Nation proving to be insufficient to protect and promote their respective interests, the contracting parties, on the 15th of July, 1866, made a new treaty of that date by the first article of which they declare that the pretended treaty made with the so-called Confederate States by the Cherokee Nation, on the 7th of October, 1861, is void, which is all that need be said upon the subject, as both parties repudiate the instrument and concur that it is of no effect.—(14 Stat. at Large, 799. 14 Ibid., 326. 14 Ibid., 439.)

Many new regulations are there adopted, and many new stipulations made, but they are all, or nearly all, foreign to the present investigation, except the provision contained in the seventeenth article. By that article the Cherokee Nation ceded, in trust, to the United States the tract of land which was sold to the Cherokees by the United States under the provisions of the second article

of the prior treaty, and also that strip of the land ceded to the nation by the fourth article of said treaty, which is included in the State where the land is situated, and the Cherokees consent that said lands may be included within the limits and under the jurisdiction of the said State, to be surveyed as the public lands of the United States are surveyed, under the direction of the Commissioner of the General Land Office, and that the lands shall be appraised as therein provided.

Annexed to that stipulation is a proviso that persons owning improvements and residing on the same, if of the value of fifty dollars, and it appears that they were made for agricultural purposes, may, after due proof, be entitled to buy the same at the appraised value, under the conditions therein specified. Sales of the kind may be made under such regulations as the Secretary of the Interior shall prescribe, but another proviso is annexed to the stipulation that nothing in that article shall prevent the Secretary of the Interior from selling for cash the whole of said neutral lands in a body to any responsible party for a sum not less than eight hundred thousand dollars.

When the treaty was submitted to the Senate the last proviso was stricken out and another was adopted in its place, as follows: That nothing in the article shall prevent the Secretary of the Interior from selling the whole of said lands, not occupied by actual settlers at the date of the ratification of the treaty, (not exceeding one hundred and sixty acres to each person entitled to pre-emption under the pre-emption laws of the United States,) in a body, to any responsible party, for cash, for a sum not less than one dollar per acre.

Exception is there made of improvements made by actual settlers, but the amendment in one respect is more comprehensive than the original treaty, as it extends the authority of the Secretary of the Interior to lands other than those known as the neutral lands, to which the original treaty was confined.

Two objections are made to the title of the appellee as affected by that treaty, in addition to those urged to show that the prior treaty between the same parties was inoperative and invalid. It is contended by the appellant that the Cherokee possessory right to the neutral lands was

extinguished by the seventeenth article of the treaty, which undoubtedly is correct, but the conclusion which he attempts to deduce from that fact cannot be sustained, that the Cherokee Nation abandoned the lands within the meaning of the last condition inserted in the patent by which they acquired the same from the United States.

Strong doubts are entertained whether that condition in the patent is valid, as it was not authorized by the treaty under which it was issued. By the treaty the United States covenated and agreed to convey the lands in fee-simple title, and it may well be held that if that condition reduces the estate conveyed to less than a fee, it is void; but it is not necessary to decide that point, as it is clear that if it is valid it is a condition subsequent, which no one but the grantor in this case can set up under any circumstances.—(4 Kent Com., 127–130; Cooper v. Roberts, 18 How., 181; Kenneth v. Plummer, 28 Mo., 145.)

Even if the rule was otherwise, still the point could not avail the appellant, as the parties manifestly waived it in this case, nor is it true that the sale in trust by the Cherokee Nation to their former grantor constitutes such an abandonment of the premises as that contemplated by the condition inserted in the patent.

Unsupported in that proposition, the appellant in the next place contends that the provisions of the seventeenth article of the treaty are a mere agreement that the article did not operate to convey the lands to the United States, but the court is entirely of a different opinion, as the proposition is contradicted by the practice of the Government from its origin to the present time.—(Insurance Co. v. Canter, 1 Pet., 542; United States v. Brooks, 10 How., 460.)

Most of the objections urged against the prior treaty are also urged to show that this treaty is inoperative and invalid, to which the same answer is made as is given by the court in response to the antecedent objections.

Under that article of the treaty a contract was made and executed, dated August 30, 1866, by the Secretary of the Interior, on behalf of the United States, and by the American Emigrant Company, for the sale of the so-called Cherokee neutral lands, containing eight hundred thousand

acres, more or less, with the limitations and restrictions set forth in that article of the treaty as amended, on the terms and conditions therein mentioned, but the successor of the Secretary of the Interior came to the conclusion that the sale, as made by that contract, was illegal and not in conformity with the treaty and the amendments thereto, and on the ninth of October of the succeeding year he entered into a new contract on behalf of the United States with the appellee for the sale of the aforesaid lands, on the terms and conditions in said contract set forth. Embarrassment to all concerned arose from these conflicting contracts, and, for the purpose of removing the same, all the parties came to the conclusion that it was desirable that the Emigrant Company should assign their contract, and all their right, title, claim, and interest in and to the said neutral lands, to the appellee, and that he should assume and conform to all the obligations of the said company under their said contract.

All of the parties having united in that arrangement, the United States and the Cherokee Nation, on the 27th of April, 1868, adopted a supplemental article to the last-named treaty, and the same was duly ratified by the Senate and proclaimed by the President.—(15 Stat. at Large, 727.)

Acting through commissioners, the contracting parties agreed that an amendment of the first contract should be made, and that said contract, as modified, should "be, and the same is hereby, with the consent of all parties, re-affirmed and made valid;" that the second contract shall be relinquished and canceled by the apellee, and that said first contract, as modified, and the assignment of the same, and the relinquishment of the second contract, "are hereby ratified and confirmed whenever said assignment of the first contract and relinquishment of the second shall be entered of record in the Department of the Interior, and when" the apellee "shall have accepted said assignment and shall have entered into a contract with the Secretary of the Interior to assume and perform all the obligations of the Emigrant Company, under said first-named contract, as therein modified." Important modifications were made in the first contract, but it is not important that they should be reproduced at this time.—(16 Ibid, 728.)

After the Indian title was extinguished by the treaty ceding the neutral lands to the United States, and before the supplemental treaty was concluded, many settlers, it is claimed, including the appellant, went on these lands for the purpose of settlement. They took, and have continued, possession for the purpose of complying with and procuring titles under the pre-emption laws passed by Congress, but the local land-offices were not open to them, and of course they were denied the opportunity to make proof and payment. Instead of that, patents of the lands, not belonging to actual settlers, were issued to the appellee, and it is admitted by the appellant that the patent of October 31, 1868, covers the land in controversy, and that he, the appellant, is not entitled to relief if that patent gives to the appellee a valid title.

Precisely the same objections were made to the treaty ceding back the neutral lands to the United States, and to the supplemental treaty, as were taken to the prior treaty under which the United States covenanted to convey the neutral lands to the Cherokee Nation, and they must be overruled for the reasons given for overruling the objections to the prior treaty.

Acts of Congress were subsequently passed recognizing the treaty ceding back the lands to the United States, and the supplemental treaty as valid, and making appropriations to carry the same into effect.—(15 Stat. at Large, 222; 12 Stat. at Large, 793; 10 Stat. at Large, 283; 16 Ibid., 356; 5 Ibid., 73.)

Some other objections of a purely technical character are made by the appellant to the title of the appellee, but these are satisfactorily answered in the printed argument filed in the case by the latter party, and are accordingly overruled.—(Attorney General v. Deerfield Bridge Co., 105 Mass., 9.)

Viewed in any light, the court is of the opinion that the title to the land in controversy is in the appellee, and that there is no error in the record.

Apply the principles adopted in this case and the reasons given in support of the same, to the case of William H. Warner v. James F. Joy, number 327 on the calendar, and it is clear that the decree in that case must also be affirmed, as the pleadings are substantially the same as

in the case just decided, and the stipulation of the parties is that the court may take and determine the demurrer filed upon the agreements made in that case and without further argument.

Decree affirmed in each of those two cases.

The principles in this decision, applying to the Cherokees, apply also to the other Indian nations and tribes in our country; and we invite your particular attention to that part of the decision that asserts * * "*On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it; and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political.*"

Those who are in advocacy of this territorial legislation, as we believe to despoil us of our lands, allege that our people are standing in the way of progress and civilization, and that the present Indian policy is a failure. To meet the allegations of interested parties, we wish to submit the evidence of the President, the Secretary of the Interior, the Commissioner of Indian Affairs, and of the Board of Indian Peace Commissioners.

The President, in his message to your honorable body, says:

INDIANS.

The policy which was adopted at the beginning of this Administration with regard to the management of the Indians has been as successful as its most ardent friends anticipated within so short a time. It has reduced the expense of their management, decreased their forage upon the white settlements; tended to give the largest opportunity for the extension of the great railways through the public domain, and the pushing of settlements into more remote districts of country, and at the same time improved the condition of the Indians. The policy will be maintained without any change, excepting such as further experience may show to be necessary to render it more efficient.

The subject of converting the so-called Indian Territory south of Kansas into a home for the Indian, and erecting therein a territorial form of government, is one of great importance as a complement of the existing Indian policy. The question of removal to that Territory has within the past year been presented to many of the tribes resident upon other and less desirable portions of the public domain, and has generally been received by them with favor. As a preliminary step to the organization of such a territory it will be necessary to confine the Indians now resident therein to farms of proper size, which should be secured to them in fee, the residue to be used for the settlement of other friendly Indians. Efforts will be made in the immediate future to induce the removal of as many peaceably disposed Indians to the Indian Territory as can be settled properly without disturbing the harmony of those already there.

There is no other location now available where a people who are endeavoring to acquire a knowledge of pastoral and agricultural pursuits can be as well accommodated as upon the unoccupied lands in the Indian Territory.

A territorial government should, however, protect the Indians from the inroad of whites for a term of years until they become sufficiently advanced in the arts and civilization to guard their wn rights, and from the disposal of the lands held by them, for the same period.

Also, in his letter of October 26th, he says to Hon. Geo. H. Stuart:

EXECUTIVE MANSION,
WASHINGTON, D. C., *October* 26.

To Geo. H. Stuart:

MY DEAR SIR: Your favor of the 24th instant, saying that a change in the Indian policy of the Administration is reported to be contemplated, is just received. Such a thing has not been thought of. If the present policy towards Indians can be improved in any way, I will always be ready to receive suggestions on the subject; but if any change is made, it must be on the side of centralization and colonization of the Indians. I do not believe our Creator ever placed different races of men on this earth with a view of having the stronger exert all his energies in the

extermination of the weaker. If any change takes place in the Indian policy of the Government while I hold my present office, it will be on the humanitarian side of the question. Very truly, yours,

U. S. GRANT.

While we do not indorse the President's idea of a Territorial government over our people without their consent, we have this to say: that from his message, he is not in favor of such a government as these bills propose. It is but justice to him to observe in his message that he says as a *preliminary* step to such a government, many other tribes of Indians should be concentrated in the Indian Territory, and their lands alloted *in fee*, which of necessity will require the work of years, and in the meantime he recommends protection to the Indians from the intrusion of the whites.

The Secretary of the Interior, in his report for 1872, says:

* * * * * * *

Measured by any true standard, the present Indian policy of the Government has proved a success, inasmuch as for three years it has secured the largest and freest extension and development of our railways and frontier settlements which was possible under the circumstances, with far less of loss of life and property than would have been suffered under any other plan of dealing with the hostile and roving tribes beyond the Missouri river. In our intercourse with the Indians it must always be borne in mind that we are the more powerful party, and have uniformly regarded the Indians as the wards of the nation.

* * * * * * *

The reservation system withdraws the great body of the Indians from the direct path of our industral progress, and allows the work of settlement and the extension of our railways to go forward up to the full limit of the capacities of capital and immigration, with absolutely no check or diminution on account of Indian hostility actual or apprehended. There is not a mile of railway

which has authority of law for its construction, and for which the capital stands ready, which is unbuilt to-day by reason of danger from Indian attack. There is not a family at the East, or newly arrived from Europe, which is desirous of a western settlement, but can locate itself in safety on public lands at any point from Omaha to Sacramento. It follows, from these two propositions, that the peaceful progress of settlement and industrial enterprise is only limited by the resources of the country and the expansiveness of our population. The work of circumscribing and confining the evil, of which complaint is made, is, therefore, being carried forward as rapidly and effectively as in the nature of the case is possible; and the three conditions of a successful treatment of the Indian difficulty are shown to be realized in the present policy of the Government toward the hostile and semi-hostile tribes.

* * * * * * *

Judicious management will in a few years secure the removal of a large portion of the tribes of the Rocky Mountains to the Indian Territory.

The Board of Indian Commissioners, in their Report, say:

Nearly five-sixths of all the Indians of the United States and Territories are now either civilized or partially civilized, and the records show that under their present treatment they commit a smaller number of serious crimes against the whites than an equal number of white men in any part of the western country, commit against each other.

These facts seem to be but little known, and when the telegraph announces that a white man has been killed by Indians, most persons attach the guilt to the whole race. As well might they hold the clergy and merchants of New York personally guilty of the daily murders there committed, and express a desire for their "extermination."

The convictions of the Board that it is the imperative duty of the Government to adhere to its treaty stipulations with the civilized tribes of the Indian Territory, and to protect them against the attempts being made upon

their country for the settlement of the whites, have undergone no change. The idea that the Indian title to the reservation in the territory is ever to be extinguished should be abandoned, and any congressional legislation which would seem to have contemplated such possibility ought to be repealed.

It is not the opinion of the Board that a barbarous, aboriginal race may shut out from the occupancy of civilization vast regions of country over which they may roam, simply because they were first on the soil, but we deny that the titles to the Indian reservations, generally, are affected by this principle. It is peculiarly inapplicable in the case of the reservations in the Indian Territory. The mere possessory title of the aboriginal inhabitants was long ago extinguished by conquest and expulsion, and the present occupants are there with whatever title was conveyed to them by the United States. Their lands were not conveyed to them as an act of grace, but for considerations which were deemed of ample value by the Government; nor can their rights be properly affected by the question as to whether they are white, red, or black.

If national honor requires the observance of national obligations entered into with the strong, how much more with the weak. To repudiate either directly or or by any indirection, our solemn treaty obligations with this feeble people, would be dishonor, meriting the scorn of the civilized world. The passage of any law for the organization of a territorial government not acceptable to the civilized tribes, (which have long since ably demonstrated their capacity for self-government,) and which would indirectly open their country for the ingress of the whites, would, in the opinion of the Board, be such an infraction of our obligations.

That these Indian reservations are not, as has been represented by those who covet them, to an unreasonable extent lying unused by the Indians, and that their owners are not a horde of savage nomads standing in the way of civilization, as they would have us believe, is best shown by the appended statistics compiled from the ninth census and other official sources:

Comparative Statistics of the Territories.

Territories.	Total population.	Area in acres.	Number of farms.	Acres of improved land in farms.	Bushels of wheat, corn, oats, &c.	Value of farm produce, including increase in stock.	Number of horses, cattle, &c.	Value of horses, cattle, &c.	Number of public schools.	Number of scholars.	Amount expended on schools.	Valuation of real and personal property.
Arizona	9,658	72,406,240	172	14,585	118,203	$277,998	7,191	$147,196	.....	262	$5,529 00	$3,440,791
Colorado.....	39,864	68,880,160	1,738	95,594	1,002,273	2,335,106	208,792	2,871,102	135	5,145	98,105 00	20,333,308
Dakota.....	14,181	96,596,128	1,720	42,645	473,159	495,697	14,140	779,952	.....	1,144	12,913 71	5,599,702
Idaho.....	14,999	55,258,160	414	26,603	320,755	637,797	6,316	540,580	19	427	.....	6,552,681
Montana.....	20,595	92,016,640	851	84,674	512,647	1,676,660	47,125	1,818,693	.....	.....	....	15,184,522
New Mexico...	91,874	77,568,640	4,480	143,007	1,097,191	1,005,060	699,413	2,389,157	None	None...	Nothing.....	31,549,793
Utah.....	86,786	54,065,043	4,908	118,755	1,103,366	1,973,142	113,949	2,149,814	277	15,924	.....	16,159,995
Washington...	23,955	44,796,160	3,127	192,016	851,483	2,111,902	120,889	2,104,343	157	3,829	28,088 00	13,562,164
Wyoming	9,118	62,645,068	175	338	721	42,760	18,552	441,795	.....	.....	.....	7,016,748
Indian.....	68,505	44,154,240	.....	204,677	6,739,355	4,663,610	464,465	4,947,101	164	5,093	127,408 92	*16,987,818

*Valuation of real estate, which is held in common, and of stocks amounting to $4,342,707 88⅔, are not included.
NOTE.—In the populations of the Territories, except Indian Territory, the Indian population is excluded.

It will be seen from the comparison, that the Indian Territory, in population, number of acres cultivated, products, wealth, valuation, and school statistics, is equal to any organized Territory of the United States, and far ahead of most of them. It has a smaller area than any other, and a larger population than any except Utah and New Mexico. It has more acres of land under cultivation than Washington Territory, over one-third more than Utah, and more than twice as many as Colorado or Montana; and the number of bushels of wheat, corn, and other farm-products raised in the Indian Territory is more than six times greater than either Utah, New Mexico, or Colorado.

In 1871 the cotton crop of the Indian Territory was about 270,000 pounds. This year the amount is increased; and that the quality of the crop is good may be inferred from the fact that specimens exhibited at the fair of the Saint Louis Agricultural and Mechanical Association, received three premiums, amounting respectively to $500, $250, and $100.

Although any addition to the force of these facts will seem needless, it is but just to remark that the civilized Indians of the Territory had their lands devastated and their industries paralyzed during the war of the rebellion, in the same relative proportion as other parts of the South, and have not fully recovered from the effects; and that the reports of this year show an additional marked increase in population, acres of land cultivated, productions, and wealth.

The partially civilized tribes, numbering about 50,000 souls, have, in proportion to population, more schools and with a larger average attendance; more churches, church members, and ministers; and spend far more of their own money for education than the people of any territory of the United States. Life and property are more safe among them, and there are fewer violations of law than in the Territories.

The Cherokees, with a population of 15,000, have two boarding-schools and sixty day-schools, (three of which are for the children of freedmen,) with an average attendance of 1,948 pupils, sustained at a cost of $25,000 last year.

The Creeks, numbering 15,000, have three missions and 2,050 church members, and an average Sunday-school attendance of 464. They have one boarding-school and thirty-one day-schools, attended by 860 pupils, at a cost of $14,258 for the past year.

The Choctaws and Chickasaws, numbering 20,000, have three missions and 2,500 church members. They have two boarding-schools and forty-eight neighborhood day-schools. Thirty-six of these are sustained by the Choctaws at a cost of $36,500; fourteen by the Chickasaws at a cost of $33,000 last year.

We have thus shown, from the evidence of the President and his executive officers for the Indian service, that we are not "standing in the way of civilization," but rapidly marching in the way of progress. Your Government asked us to become civilized, and we are becoming so. We have adopted your form of government. We have embraced your religion. We have kept our obligations with you. What more can be asked of us? Our people are your wards, and their weakness should be their strength. The Territorial measures for our country pending before Congress are ruinous to our people, and in violation of the honor of your Government, pledged to our people in the most sacred manner known to civilized nations. And we, in the name of our people, protest against them, and pray you not to pass them.

The Confederation of the Indians of the Indian Territory was provided for in the General Council established four years ago, and which has been kept up by your honorable body by appropriations for its expenses. Why not let us alone and let us foster that institution, and under its auspices concentrate our race in the Indian

Territory, and so elevate our people as to fit them at no distant day to become citizens of your great Government.

WILL. P. ROSS,
Principal Chief.
JOSEPH VANN,
W. P. ADAIR,
Cherokee Delegation.
MICEO HUTKEE,
NOCUS YASHOLAR,
COWETAH MICCO,
TIMOTHY BARNETT,
D. N. MCINTOSH,
S. W. PERRYMAN,
PLEASANT PORTER,
Creek Delegation.
JOHN CHUPCO,
JOHN JUMPER,
JAMES GLACTOE,
ROBERT JOHNSON.
Seminole Delegation.
PETER P. PITCHLYNN,
Choctaw Delegation.